IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.3029 OF 2005

Anandrao Sadashiv Adsul ...Petitioner
vs.
Ratnabai Anandrao Adsul & Ors. ...Respondents

Mr.Nitin Deshpande for the Petitioner
Ms S.V.Gajare,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : SEPTEMBER 12,2006.

P.C.:

1. Heard Shri Deshpande for the Petitioner. The Petitioner is the husband and the first Respondent is the wife. The first Respondent filed an application for maintenance under section 125 of the Code of Criminal Procedure, 1973. By order dated 29th May 1980 the learned Judicial Magistrate First Class granted maintenance at the rate of Rs.100/- p.m. in favour of the first Respondent-wife. An Application was made for enhancement by the first Respondent in which compromise was arrived at on 29th June 1988. In the said compromise, it is recorded that the Petitioner will pay total sum of Rs.200/- p.m. from the month of June 1988. The compromise records that thereafter, the first Respondent will not apply for enhancement in maintenance amount.

2. In the year 1989 an application was filed by the first Respondent for enhancement in the maintenance amount. That application was sought to be opposed by the Petitioner by relying upon the earlier compromise. By order dated 31st March 1995 the learned Judicial Magistrate First Class allowed the Application and enhanced the maintenance amount to Rs.300/- p.m. from the date of filing of the Application. In the year 1999, a Revision Application preferred by the

Petitioner against the said order was allowed. In the year 2000, again an Application came to be filed by the first Respondent for grant of enhancement of maintenance. The learned Judicial Magistrate First Class allowed the said Application and enhanced the maintenance amount to Rs.500/- p.m. from the date of order i.e. 19th January 2005. In a Revision Application preferred by the Petitioner the Sessions Court has confirmed the said order.

3. Shri Deshpande for the Petitioner placed reliance on the compromise dated 29th June 1988. He pointed out that earlier application filed for enhancement was dismissed in view of the order passed by the Revisional Court in the year 1999 and therefore a fresh Application filed in the year 2000 could not have been entertained. He, therefore, submitted that there is no justification in the order granting enhancement.

4.I have considered the submissions. The compromise recorded on 29th June 1988 cannot have effect of waiver of the statutory right of the first Respondent to apply under section 127 of the said Code. Any such clause in the compromise which is an agreement between the parties cannot be given effect to. The learned Magistrate has enhanced the maintenance to Rs.500/- p.m. with effect from 19th January 2005. The earlier order was passed in the year 1988. The passage of time itself brings about the change in circumstances warranting exercise of power under section 127 of the said Code. In my view, no fault can be found with the impugned order. There is no merit in the Petition and the same is rejected.

JUDGE